

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2008-400-E - ORDER NO. 2009-31

MARCH 6, 2009

IN RE: Progress Energy Carolinas, Incorporated's)	ORDER GRANTING
Motion for Waiver of Commission Rule 103-)	MOTION TO DISMISS
331)	

This matter comes before the Public Service Commission of South Carolina (“Commission”) on a Motion to Dismiss filed by Progress Energy Carolinas, Inc. (“Progress”). Progress had originally filed a Motion for Waiver of Commission Rule 103-331 to allow Progress to obtain a security deposit from Pilgrim’s Pride Corporation (“Pilgrim”) to secure payment of that Company’s account. We grant the Motion to Dismiss.

Commission Regulation 26 S.C. Code Ann. Regs. 103-301(3), Waiver of Rules, states: “In any case where compliance with any of these rules and regulations introduces unusual difficulty, such rule or regulation may be waived by the Commission upon a finding by the Commission that such waiver is in the public interest.” On October 23, 2008, Progress filed a Motion for Waiver of Commission Rule 103-331 in order to allow Progress to require its customer, Pilgrim, to pay a security deposit, given the apparent financial condition of that Company at that time. Pilgrim is a large industrial customer served by Progress located in Sumter, South Carolina, with average monthly electric bills in excess of \$440,000. Progress currently does not have a security deposit or any other form of payment assurance associated with Pilgrim's account. Citing a Wall Street

Journal article dated October 17, 2008, Progress' motion stated that Pilgrim was in severe financial difficulty, and that there was some speculation that it may be forced to file for bankruptcy in the near future.

Citing to Commission Regulation 103-331, Progress pointed out that the Commission's rules only allow an electric utility to require a customer to provide a deposit if the customer's past payment record shows delinquent payment practices or the customer is currently delinquent in payments. Progress admitted that Pilgrim's payment history did not reflect any such delinquent payment practices and that its account was then current. Therefore, in spite of its concerns regarding Pilgrim's continued financial viability, it could not require Pilgrim to provide a security deposit or other form of payment assurance as a condition of continued service.

Progress argued that, if Pilgrim was unable to pay its monthly electric bills, the unpaid delinquent balance could easily exceed \$1 million, and that Progress' remaining customer body would ultimately be responsible for the payment of any uncollectible receivable. Therefore, Progress asserted that it was in the best interest of the utility and its customer body to properly secure the Pilgrim account.

On Monday, November 3, 2008, Pilgrim's filed an initial response, claiming it had not been served with notice of the action until late Friday afternoon, October 31, 2008. Fundamentally, Pilgrim argued that Progress's motion should be denied because it was based not upon an allegation of actual delinquency in payment by Pilgrim, but upon

speculation that Pilgrim's bankruptcy was imminent.¹ Our current statutes and regulations allow utilities to increase security deposits required of those customers whom the utility can demonstrate have a history of delinquency, but they do not provide for increased security deposits to be assessed from customers who may prospectively become delinquent. Further, Pilgrim argued that requiring the company to remit a security deposit of several hundred thousand dollars, in and of itself, might hasten the foretold bankruptcy filing. The resulting job losses, Pilgrim argued, would not be in the public interest.

We are unconvinced that Progress was ever entitled to the relief it sought in this motion. While we are sympathetic to the argument that it is in the ratepayers' interests to protect the utility from nonpayment of a large bill by a commercial user in financial distress, it is far from clear that requiring a large security deposit would provide such protection if bankruptcy were to ensue. We are aware that there would be some legal argument as to whether the utility would be permitted to keep any portion of such a deposit, or instead ordered to disgorge the payment under the bankruptcy preference rules (11 U.S.C. Section 547). Furthermore, this dispute demonstrates that the "public interest" can sometimes require broader considerations. In this case, the Commission had to consider whether requiring the requested security deposit might cause or accelerate the customer's descent into bankruptcy and result in significant job loss.

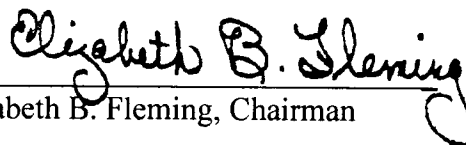
¹ Pilgrim's filing made multiple assurances to the Commission that such was not the case: "Pilgrim's fully intends to continue its timely payment practice for all current and future invoices." p.2; "In all of its public statements Pilgrim's has denied that a bankruptcy filing is imminent . . ." p. 3; ". . . Pilgrim's denies that it is headed for bankruptcy. . ." p. 4; "Pilgrim's has paid, and intends to continue paying, all invoices from PEC on a timely basis." p. 5; "PEC has not explained why, even if Pilgrim's did enter bankruptcy (a fact Pilgrim's in no way concedes or even intimates is a possibility), Pilgrim's would not pay its invoice." p. 6. Its subsequent bankruptcy filing belies these statements.

In any case, this debate is now academic. While Pilgrim's November 3 filing denied that its financial situation was sufficiently dire to jeopardize payment of its electric bill, on December 1, 2008, Pilgrim filed a voluntary petition under chapter 11 of title 11 of the Bankruptcy Code. Progress, therefore, is no longer able to obtain the originally proposed deposit from that Company. Therefore, Progress moves this Commission for a dismissal of Progress' Motion for Waiver of Rule 103-331.

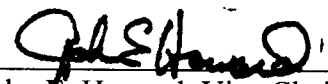
We have examined this matter, and conclude that, under the circumstances, the Motion to Dismiss should be granted, because of the Company's bankruptcy. The Motion is therefore granted.

This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:


Elizabeth B. Fleming, Chairman

ATTEST:


John E. Howard, Vice Chairman
(SEAL)